

Selected Documents from Claim File

Claim No. LRF-1999-0405-01

CLAIM PAYMENT CHECKLIST

I. General Information

LRF Claim No: <u>LRF-1999-0405-01</u>	Related Claim Nos: _____
1. Claimant: Name: <u>Mountain Land Design, Inc.</u> Address: <u>2984 S 300 W</u> City, State, Zip: <u>Salt Lake City, UT 84065</u> Telephone: <u>(801) 466-0990</u> DOPL/LRF No: <u>98-357565-0000 Supplier</u>	
2. Claimant's Legal Counsel: Name/Law Firm: <u>Bryan W. Cannon, P.C.</u> Address: <u>871 E 9400 S</u> City, State, Zip: <u>Sandy, UT 84094</u> Telephone: <u>(801) 255-7475</u>	
3. Non-Paying Party/Permissive Party: (Entered Appearance ____ Yes <u>X</u> No) Name: <u>Glendon Homes - Glen Adams, President</u> Address: <u>PO Box 1075</u> City, State, Zip: <u>Pleasant Grove, UT 84062</u> Telephone: <u>(801) 785-3300</u> DOPL No: <u>96-308671-5501</u>	
4. Non-Paying Party/Permissive Party's Legal Counsel: Name/Law Firm: <u>Steven Bennett</u> Address: <u>3865 S Wasatch Blvd</u> City, State, Zip: <u>Salt Lake City, UT 84109</u> Telephone: <u>(801) 278-1670</u>	
5. Original Contractor: Name: <u>Glendon Homes - Glen Adams, President</u> Address: <u>PO Box 1075</u> City, State, Zip: <u>Pleasant Grove, UT 84062</u> Telephone: <u>(801) 785-3300</u> DOPL No: <u>96-308671-5501</u>	
6. Amount claimed: <u>\$37,954.62</u>	
7. Owner: Name: <u>Roger and Jeen Brown</u> Address: <u>1536 S Stone Hollow Dr</u> City, State, Zip: <u>Bountiful, UT 84010</u> Telephone: <u>(801) 292-4697</u>	
8. Subsequent Owner: Date: _____ Name: _____ Address: _____ City, State, Zip: _____ Telephone: _____	

9. Owner-Occupied Residence:

Address/Location: 1536 S Stone Hollow Dr, Bountiful, UT 84010

Legal Description: Lot 507 Stoneridge "E" Subdivision

10. Claim Classification: Formal XX Informal

II. Claim Processing Information

Initial Claim Processing -- All Claims:	Received	Forwarded
Front Desk	04/05/99	04/05/99
LRF Specialist--set up file, notice of filing, CRIS entry	04/05/99	04/22/99
Permissive Party response Deadline: <u>05/24/99 - No written response was received pursuant to the permissive party letter informing Glendon Corp. of the claim. However, Glen Adams, the President of Glendon Corp. had contacted Masuda Medcalf in Dec. 1998 and indicated a willingness to be involved in reviews of claims. He was informed that as claims are filed with LRF, he will receive notice in the mail, and if he has any concerns, to make them known to LRF. Adams has also met with AAG Tony Patterson and informed him that all remaining assets of the Glendon Corp. are subject to a security interest by Barnes Bank</u>	04/22/99	NONE
LRF Coordinator/Claims Examiner--review	04/22/99	06/14/99

Section's Recommended Disposition – ALL CLAIMS:

☐ Approve for full payment ☒ Approve for partial payment ☐ Deny ☐ Dismiss

Date: 06/28/99

Reason(s):

1. A potential problem is that Glendon Corp's President, Glen Adams, signed an affidavit stating that he was paid in full by the owners, but he crossed out the language "and received". Mr. Adams explained that there was approximately \$20,000 held in an escrow account with Western States Title Co. Western States Title and their attorney Read Hellewell have stated that Mr. Adams is mistaken and the money was in fact part of an indemnity agreement by Adams to Western States Title, as consideration for the Title company accepting the responsibility of protecting the title on the residence. Mr. Hellewell is expected to provide documentation to support this statement.

2. Claimant became a member of the Fund on 4/1/98. (LRF database). However, most of Claimant's materials were supplied to the Brown property in 1997 and early 1998 prior to Claimant's membership with the Fund. There was only one invoice dated after Claimant became a member, invoice #110551, dated 6/18/98, in the amount of \$1,114.55. (Claim file, pp. 54). Therefore, we can recommend only payment of that principle amount. Accordingly, the prejudgment interest awarded by the court is recalculated based upon the amount awarded to the original stated principal, and what it would be proportionately to the single invoice of \$1,114.55. Finally, only \$18.00 of the \$25.00 claimed for post-judgment costs were supported by evidence.

3. Besides this claim, there have been five notices of commencement of action filed as to the Brown residence, totaling approximately \$26,000. Assuming that the payment of this claim will be limited to \$1,355.19 as recommended by the section, there should be no problem with the \$75,000 cap. However, if the full amount claimed, approximately \$38,000, were approved by the Board, then we could potentially have a problem with the \$75,000 cap, and perhaps the claims should be held by the section after board approval until all the claims are processed. The problem with holding the claims until all other claims have been filed and processed is that additional interest will be incurred.

6/30/99: Phone calls to the 2nd Dist. Ct and to legal counsel have revealed that Mike & Sterling's Floor Center and Carmack Heating and Air, whose combined claims against Glendon Corp. totaled \$10,290.93, will not be filing a claim with the Fund. They have apparently failed to meet the 120 day filing deadline (judgment was entered against Glendon Corp. in Sept. 1998). Therefore, even if the Board were to approve payment of the entire claim of Mountain Land Design, the total payable claims would be approximately \$53,000.00 and well below the \$75,000 cap.

Board's Recommended Disposition – INFORMAL CLAIM:

___ Approve for full payment X Approve for partial payment ___ Deny ___ Dismiss

Date: 07/01/99

Reason(s): Ms. Barbara Harper, Controller of Mountain Land Design, attended the Board meeting. She requested that the Board consider paying at least the total of Mountain Land's invoices, stating that they would be willing to forego the interest and costs. She argued that the Division's handouts state that a claimant must be a member of the Fund before its claim arises, but does not explain when one's claim arises.

The Board, in a 4-1 vote, determined that UCA 38-11-203(1)(a) is vague. That section states that a claimant must be a qualified beneficiary "during the construction on the residence," which could be interpreted to mean at any time during the construction on the residence, or during the time that the claimant provided services. Therefore, the majority of the Board decided to pay the claim of Mountain Land Design as requested by Ms. Harper for the total of all its invoices, or \$31,368.13.

FINAL ORDER -- ALL CLAIMS:

___ Approve for full payment ✓ Approve for partial payment ___ Deny ___ Dismiss

Date: _____

Reason(s): On 7/2/99, Gary Bowen, Director of DOPL, requested that no payment be made on this claim until the claim was reviewed by DOPL's representatives at the AG's office.

If Order is approved for full or partial payment:

Payment amount: \$ 1355.19

Date payment request forwarded to Finance: 8/23/99

Date notice of payment sent to non-paying party: 8/23/99

Deadline for non-paying party's reimbursement: ~~8/23~~ 11/17/99

Date claim referred for subrogation action: _____

Outcome of subrogation action: _____

Date non-paying party referred to Investigations: _____

Nature/outcome of disciplinary action: _____

If Order is fully or partially denied:

Reason(s) for denial: _____

Appeal deadline: 9/23/99

Date request for agency review filed: _____

Date/Nature of Order: _____

III. Jurisdiction Checklist

Y/N	Initis	Date	Issue
YES	mam	06/28/99	Is Application Jurisdictionally Sound?

YES	mam	06/28/99	<p>A. Claimant brought civil action against the non-paying party within 180 days from the last day claimant provided qualified services, which action was to recover monies owed him for the services, or was precluded from doing so by the non-paying party's bankruptcy filing within 180 days of claimant's completion of qualified services. (38-11-204(3)(d)(i)(A) and (iv). <u>Claimant provided materials to the subject residence from 8/15/97 through 6/18/98. (Claim file, pp. 3, 53-73). Claimant filed its civil action against non-paying party Glendon Corporation on 10/30/98, 134 days later. (See Amended Complaint, Claim file, p. 76). (The original complaint was filed only against Glen Adams, complaint dated 9/28/98, filed 10/1/98. Claim file, p. 51. The Amended Complaint changed the defendant to Glendon Corporation, per stipulation of the parties. Claim file, p. 75).</u></p>
YES	mam	06/28/99	<p>B. If civil action filing is required, notice of commencement of action was timely filed within 30 days of claimant's filing of civil action. (38-11-204(3)(d)(i)(B)) <u>Claimant filed its NCA on 10/27/98. (Claim file, p. 37)</u></p>
YES	mam	06/28/99	<p>C. Claim application was timely filed within 120 days of the civil judgment or bankruptcy filing. (38-11-204(2)). <u>A default judgment was entered against Glendon Corporation on 12/15/98. (Claim file, p. 39). Claimant's application was filed on 04/05/99, 111 days later.</u></p>

IV. Complete Application Checklist

Y/N	Inits	Date	Issue
YES	mam	06/28/99	Is Application Complete?
YES	mam	06/28/99	A. Form submitted. (38-11-204(1)(c))
YES	mam	06/28/99	B. Form completed. (38-11-204(1)(c))
YES	mam	06/28/99	C. Application fee submitted. (38-11-204(1)(b)) ICN No: <u>9096600102</u>
YES	mam	06/28/99	D. Supporting documents submitted. (38-11-204(1)(c))
YES	mam	06/28/99	1. Evidence of written owner contract (R156-38-204a(1))

YES	mam	06/28/99		a. Written contract between owner and original contractor/real estate developer; (R156-38-204a(1)(a)) or
n/a	mam	06/28/99		b. Civil judgment with appropriate findings. (R156-38-204a(1)(b)) or
YES	mam	06/28/99		2. Evidence of building permit compliance. 156-38-204a(2))
YES	mam	06/28/99		a. Building permit; (R156-38-204a(2)(a)) or
n/a	mam	06/28/99		b. Letter that building permit is not required. (R156-38-204a(2)(b))
YES	mam	06/28/99		3. Evidence of compliance with licensing statute: (R156-38-204a(3))
YES	mam	06/28/99		a. Original contractor is licensed; or
n/a	mam	06/28/99		b. Original contractor is unlicensed, and
n/a	mam	06/28/99		documentation of exemption from licensure; or
n/a	mam	06/28/99		c. Real estate developer.
YES	mam	06/28/99		4. Evidence that owner paid original contractor/real estate developer in full: (R156-38-204a(4))
YES	mam	06/28/99		a. Affidavit from original contractor/real estate developer; (R156-38-204a(4)(a)) or
n/a	mam	06/28/99		b. Civil judgment with appropriate finding; (R156-38-204a(4)(b)) or
n/a	mam	06/28/99		c. Affidavit that claimant was precluded from obtaining an affidavit or civil judgment, (R156-38-204a(4)(c)) and

n/a	mam	06/28/99		independent evidence. (R156-38-204a(4)(c))
YES	mam	06/28/99		5. Evidence that claimant brought civil action against original contractor/real estate developer: (R156-38-204a(5))
YES	mam	06/28/99		a. Complaint, (R156-38-204a(5)(a)) and
YES	mam	06/28/99		Notice of Commencement of Action; (R156-38-204a(5)(b)) or
n/a	mam	06/28/99		b. Non-paying party's bankruptcy filing. (R156-38-204a(5)(c))
YES	mam	06/28/99		6. Evidence that non-paying party failed to pay claimant: (R156-38-204a(6))
YES	mam	06/28/99		a. Civil judgment with appropriate finding; (R156-38-204a(6)(a)) or
n/a	mam	06/28/99		b. Non-paying party's bankruptcy filing, (R156-38-204a(6)(b)) and
n/a	mam	06/28/99		Independent evidence. (R156-38-204a(6)(b))
YES	mam	06/28/99		7. Evidence that claimant made a reasonable attempt to collect the judgment from the non-paying party, or was precluded from doing so by the non-paying party's bankruptcy filing: (R156-38-204a(7))
YES	mam	06/28/99		a. Supplemental order, (R156-38-204a(7)(a)) and
YES	mam	06/28/99		b. Return of service of supplemental order, (R156-38-204a(7)(b)) and
n/a	mam	06/28/99		c. If assets identified, Writ of Execution, (R156-38-204a(7)(c)) and

n/a	mam	06/28/99		d. If assets identified, Return of Execution; (R156-38-204a(7)(d)) or
n/a	mam	06/28/99		e. Non-paying party's bankruptcy filing. (R156-38-204a(7)(e))
YES	mam	06/28/99		8. Evidence that the residence is an owner-occupied residence. (R156-38-204a(1)(a)(i) and (ii))
YES	mam	06/28/99		a. Owner-Occupied Residence Affidavit; (R156-204a(9)(a)) or
n/a	mam	06/28/99		b. Civil judgment containing appropriate finding; (R156-38-204a(9)(b)) or
n/a	mam	06/28/99		b. Evidence that claimant was unable to obtain an Owner-Occupied Residence Affidavit, (R156-38-204a(9)(c)) and
n/a	mam	06/28/99		independent evidence. (R156-38-204a(9)(c))
YES	mam	06/28/99		E. Signed Certification and Affidavit. (R156-38-204(8))
YES	mam	06/28/99		F. Completed Certificate of Service. (R156-38-105(5)) and (6))
YES	mam	06/28/99		G. Completed Demographic Questionnaire.

V. Required Factual Findings

Y/N	Inits	Date	
INC	mam	06/28/99	Does Claim Meet Findings Required Under § 38-11-203(1)?
Part	mam	06/28/99	A. Claimant was a qualified beneficiary during the construction on the residence. (38-11-203(1)(a)) <u>Claimant became a member of the Fund on 4/1/98. (LRF database). However, most of Claimant's materials were supplied to the Brown property in 1997 and early 1998 prior to Claimant's membership with the Fund. Invoices show that Claimant provided only \$1,114.55 of materials to the Brown residence after it became a member of the Fund. (Claim file, pp. 53-73).</u>

YES	mam	06/28/99	<p>B. Owner contracted in writing with an original contractor for construction on the residence, or with a real estate developer for the purchase of the subject residence. (38-11-102(12); 38-11-204(3)(a))</p> <p><u>A construction contract was executed between owners Jeen and Roger Brown and Glendon Corporation on 6/15/96. (Claim file, pp. 10- 32, 21).</u></p>
YES	mam	06/28/99	<p>C. Original contractor was licensed or exempt from licensure at time of contract. (38-11-204(3)(a)(i))</p> <p><u>Glendon Corporation was approved for licensure on 1/12/96, license #96-308671-5501. That license was voluntarily surrendered on 11/30/98. (ALS database). The Brown's contract with Glendon Corporation was on 6/15/96. (Claim file, pp. 10-32).</u></p>
INC	mam	06/28/99	<p>D. Owner paid original contractor/real estate developer in full in accordance with the written contract and any amendments to it. (38-11-204(3)(c))</p> <p><u>Glen Adams, the President of Glendon Corporation, signed an affidavit dated 7/8/98, in which he states that he entered into a written contract with the Browns for the final contract price of \$1,073,944.21 after modifications, and that he was paid in full by the owners. (Claim file, p. 35-36).</u></p> <p><u>However, Adams crossed out "and received" language in the affidavit. When I asked Mr. Adams about this, he stated that the owners paid the full price of the contract, but he did not receive approximately \$20,000, which he believed was held in an escrow account to pay lien claimants. Mr. Adams referred me to Larry Johnson at Western States Title Company, who later referred me to the owners' attorney, Read Hellewell. Both Johnson and Hellewell informed me that Mr. Adams was mistaken. They stated that the money was held in an escrow account, but it was not earmarked for lien claimants. Hellewell stated that the money was part of a signed indemnity agreement between Glendon Corp. and Western States Title, to protect the title on the property. Hellewell is to provide documentation to support this claim.</u></p>

YES	mam	06/28/99	<p>E. Owner or his tenant or lessee occupied, or subsequent owner purchased the subject residence as a primary or secondary residence within 180 days from the date of completion of construction. (38-11-102(13) and (18)).</p> <p><u>Mr. and Mrs. Brown provided an Affidavit dated 9/3/98, which states that they entered into a contract with Glendon Corp. for construction of the residence, that they have paid in full, and that they are currently occupying the residence. (Claim file, pp. 47-48). However, because the Affidavit did not state the date of completion of construction and the first date of occupancy, I contacted Mr. Brown by telephone on 6/16/99. Mr. Brown informed me that the home was completed in November 1997, and they began occupying the home at that time.</u></p>
YES	mam	06/28/99	<p>F. Residence is a detached single family or duplex residence. (38-11-102(17))</p> <p><u>The Building permit states that the residence is a single family dwelling. (Claim file, p. 33).</u></p>
YES	mam	06/28/99	<p>G. Contract between claimant and original contractor, subcontractor, or real estate developer was for qualified services. (38-11-204(3)(a)(i) and (c), 38-11-102(15))</p> <p><u>Claimant provided appliances and door hardware. (Claim file, pp. 3, 53-73).</u></p>
YES	mam	06/28/99	<p>H. Claimant obtained a judgment against the non-paying party, which judgment indicates that claimant is entitled to payment by the non-paying party under an agreement to perform qualified services and was not paid for the services, or was precluded from obtaining a judgment by the non-paying party's bankruptcy filing. (Note that the non-paying party can be an original contractor, a subcontractor or supplier who contracted with the original contractor, or a subcontractor or supplier who contracted with a subcontractor or supplier.) (38-11-204(3)(c) and (d)(ii))</p> <p><u>A Default Judgment was obtained by Claimant against Glendon Corp. in the principal amount of \$35,942.88, pre-judgment interest of \$925.65, Pre-judgment costs of \$142.00, to be augmented with reasonable post-judgment costs and interest on the total judgment at the rate of 7.45% apr until paid. (Claim file, p. 39-40).</u></p>

YES	mam	06/28/99	<p>I. Claimant made a reasonable attempt to collect its judgment from the non-paying party, or was precluded from doing so by the non-paying party's bankruptcy filing. (38-11-204(3)(d)(iii) and (iv))</p> <p><u>Claimant obtained an Order in Supplemental Proceedings, and served the Order on Glendon Corporation. (Claim file, pp. 44-46). In response to questioning regarding the assets of Glendon Corporation, Claimant's counsel received an affidavit from Glen Adams dated 1/22/99, which states that Glendon Corporation is no longer doing business, and that Barnes Bank holds a security interest in all remaining assets and financial accounts of the company. (Claim file, pp. 78-79).</u></p> <p><u>LRF staff has verified the UCC filings of Barnes Bank on all of Glendon Corp's construction and office equipment, all accounts receivable, all inventory, all accounts, equipment, etc. (See claim file).</u></p>
YES	mam	06/28/99	<p>J. There is adequate money in the Fund to pay the amount recommended. (38-11-203(1)(c)) (Current PTIF report)</p>

VI. Statutory Limitations on Claim Payment

Y/N	Inits	Date	Issue														
BD	mam	06/28/99	There is no statutory limit on the amount of payment.														
BD	mam	06/28/99	<p>A. Amount of claims pending on this residence is less than or equal to \$75,000. (38-11-203(4)(a)(i))</p> <p><u>The following NCAs have been filed with the LRF section regarding the Brown residence:</u></p> <table><tr><td>1. NCA-1998-0615-01, Mike Sterling's Floor Center,</td><td>\$5,510.93</td></tr><tr><td>2. NCA-1998-0615-08, Carmack Heating & Air,</td><td>\$4,780.00</td></tr><tr><td>3. NCA-1998-0810-01, BMC West dba Pioneer Door</td><td>\$4,272.69</td></tr><tr><td>4. NCA-1999-0519-02, Professional Electric Services</td><td>\$9,788.00</td></tr><tr><td>Sub Total</td><td>\$24,351.62</td></tr></table> <table><tr><td>5. LRF-1999-0405-01, Mountain Land Design, Inc.</td><td>\$1,355.19</td></tr><tr><td>TOTAL</td><td>\$25,706.81</td></tr></table> <p><u>(The current claim is the only one filed on the residence. Although Mountain Land Design has claimed a total of \$37,954.62, we are recommending only \$1,355.19)</u></p>	1. NCA-1998-0615-01, Mike Sterling's Floor Center,	\$5,510.93	2. NCA-1998-0615-08, Carmack Heating & Air,	\$4,780.00	3. NCA-1998-0810-01, BMC West dba Pioneer Door	\$4,272.69	4. NCA-1999-0519-02, Professional Electric Services	\$9,788.00	Sub Total	\$24,351.62	5. LRF-1999-0405-01, Mountain Land Design, Inc.	\$1,355.19	TOTAL	\$25,706.81
1. NCA-1998-0615-01, Mike Sterling's Floor Center,	\$5,510.93																
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5. LRF-1999-0405-01, Mountain Land Design, Inc.	\$1,355.19																
TOTAL	\$25,706.81																
YES	mam	06/28/99	<p>B. Amount of money paid to claimant on prior claims plus amount to be paid on current claim is less than or equal to \$500,000. (38-11-203(4)(a)(ii))</p> <p><u>No other claims have been paid to claimant. (LRF records)</u></p>														
YES	mam	06/28/99	<p>C. The fund has made no unreimbursed payments on behalf of the claimant.</p> <p><u>No unreimbursed payments have been made on behalf of the claimant. (LRF records).</u></p>														

VII. Amount of Payment

Informal Claims/Civil Judgment only on Subject Residence

A1.	B. CIVIL JMT AWARDS (APPLIC. SECTION 1)	C. AMOUNTS SUPPORTED BY EVIDENCE	D. DIFFERENCE (column C - column B =)	E1. EXPLANATION
2. PRINCIPAL OR QUALIFIED SERVICES	\$35,942.88	\$1,114.55	\$(34,828.33)	See Explanation E2 Below
3. PRE-JMT COSTS	\$142.00	\$142.00	\$0.00	See Explanation E3 Below
4. PRE-JMT ATTORNEY FEES	\$0.00	\$0.00	\$0.00	See Explanation E4 Below
5. PRE-JMT INTEREST	\$925.65	\$28.70	\$(896.95)	See Explanation E5 Below
6. POST-JMT COSTS	\$25.00	\$18.00	\$(7.00)	See Explanation E6 Below
7. POST-JMT ATTY FEES	\$0.00	\$0.00	\$0.00	See Explanation E7 Below
8. POST-JMT INTEREST	\$919.09	\$51.94	\$(867.15)	See Explanation E8 Below
9. TOTALS	\$37,954.62	\$1,355.19	\$(36,599.43)	
10. PRE-JMT EXPENSES	\$1,067.65	\$170.70	\$(896.95)	
11. POST-JMT EXPENSES	\$944.09	\$69.94	\$(874.15)	

EXPLANATION

E2 A Default Judgment was obtained by Claimant against Glendon Corp. in the principal amount of \$35,942.88, pre-judgment interest of \$925.65, Pre-judgment costs of \$142.00, to be augmented with reasonable post-judgment costs and interest on the total judgment at the rate of 7.45 apr until paid. (Claim file, p. 39-40).

However, Claimant did not become a member of the Fund until 4/1/98. (LRF database). There was only one invoice dated after Claimant became a member, invoice #110551, dated 6/18/98, in the amount of \$1,114.55. (Claim file, pp. 54). Therefore, we can recommend only payment of that principle amount.

E3 Default Judgment awarded \$142.00 in costs.

E4 No attorney fees were claimed.

E5 The "principal amount" awarded in the Default Judgment apparently included \$4,574.75 in accumulated interest, according to the statement submitted by Claimant. (Claim file, p. 53) The Default Judgment then awarded \$925.65 of pre-judgment interest. Thus, it appears that pre-judgment interest was calculated twice. However, because we must determine the interest on just one invoice, we can calculate prejudgment interest as follows: $\$925.65 \text{ (int. awarded)} \div \$35,942.88 \text{ (the stated principle)} = x \div \$1,114.55 \text{ (the relevant invoice amount)}$; $1,031,683.20 = 35,942.88x$; $x = 1,031,683.20 \div 35,942.88$; $x = \$28.70$

E6 Only \$18.00 of the \$25.00 claimed post-judgment costs were supported by evidence. (See Constable's return of service of Supp. Order, Claim file, p. 46).

E7 No attorney fees claimed.

E8 The Default Judgment awarded 7.45% apr on the total judgment until paid. However, because Claimant can only be paid a principle amount of \$1,114.55 due to problems with membership with the Fund, and only \$28.70 can be paid on pre-judgment interest, the total judgment becomes \$1,285.25 for purposes of payment from the Fund. Thereafter, post-judgment interest is calculated as follows: $\$1,285.25 \times 7.45\% / 355 \text{ days} = .26233318 \text{ per day}$ $\times 198 \text{ days (from 12/15/98 to 7/1/99)} = \51.94 .

K:\home\dopl\claims\year99\9904\99040501ana



The Summit Of Residential Perfection

June 30, 1999

LRF Board Members
150 E. 300 S.
Salt Lake City, UT 84114

To Whom it May Concern,

We are writing this letter to ask for an exception to one of your rules pertaining to the Lien Recovery Fund. It seems the majority of our claim is being denied due to the fact that we were not members of the LRF when the majority of the items were supplied to the homeowner. Our total claim is for \$37,954.62. The amount we are being allowed is \$1,355.19.

The reasons we believe an exception should be made are:

1. Danny Devenport, the owner of Mountain Land Design, bought out the majority partner of Mountain Land at the start of 1998. He signed up with the LRF as soon as he became aware of its existence. As shown, we became members 4/1/98.
2. At the time we became members, we were not aware that Glendon Corp was in financial difficulty. We did not even consider filing this claim with LRF until all other resources had been exhausted. In fact, it was the homeowners' attorney that suggested we use the LRF sometime in August of 1998. I understand the reason for being a member before a claim is incurred, is to prevent people from joining the fund only when they have a claim. However, I think you would agree, this was not our intention. Had we known about the LRF, we would have joined much sooner.
3. Honestly, when we read over the requirements for filing a claim with the LRF, we were very skeptical. It seemed next to impossible to meet all of the requirements imposed. We read in your correspondence that stated as of 1/1/97 only \$26,112 had been paid out. However, we studied the criteria provided by the LRF and felt confident we qualified for recovery. We then spent hours collecting affidavits, contracts, other paperwork and filing necessary legal documents,
4. In the "Answers To Commonly Asked Questions" letter provided by the LRF, it states on page 8, Q1 - Qualified beneficiaries must "Register with the Lien Recovery

MOUNTAIN LAND DESIGN, INC.
The Summit Of Residential Perfection
2984 South 300 West • Salt Lake City, Utah 84115

Fund prior to the date the claim arises. Only persons registered with the Lien Recovery Fund prior to the time the claim at issue arises may recover it. When we read this, we felt confident we qualified based on the fact that the "claim" did not arise until August of 1998, well after we became a member. Nowhere does it say that supplies had to be supplied after becoming a member. The wording does not specify this. It only talks about the claim. We feel that this statement is unclear. We and our attorney assumed we qualified after reading this or we would have never gone to the expense or done the work to file the claim.

Due to these four reasons, especially #4, we would ask you to reconsider our claim. We are willing to waive all past and future interest and all costs we have incurred associated with this claim. The principal only balance is \$31,368.13. We would also be willing to wait for payment to make sure the \$75,000 cap is not exceeded. If the LRF decides not to pay out our claim, it would be based solely on interpretation and not on what is fair or ethical.

Sincerely,

Barbara Harper
Controller

Minutes from Board Meeting Discussion
Claim No. LRF-1999-0405-01

July 1, 1999

Barbara Harper, Controller of Mountain Land Design, attended the Board Meeting. Ms. Medcalf explained that Mountain Land was not a member of the Fund until April 1998, and that most of the supplies provided by this supplier were done prior to April 1998. Ms. Harper requested that the Board consider paying at least the total of Mountain Land's invoices, stating that they would be willing to forego the interest and costs. She argued that the Division's handouts state that a claimant must be a member of the Fund before its claim arises, but does not explain when one's claim arises.

The Board, in a 4 – 1 vote, determined that UCA 38-11-203(1)(a) is vague. That section states that a claimant must be a qualified beneficiary "during the construction on the residence." Which could be interpreted to mean at any time during the construction on the residence, or during the time that the claimant provided services. Therefore, the majority of the Board decided to pay the claim to Mountain Land Design as requested by Ms. Harper for the total of all its invoices, or \$31,368.13. Mr. Weller opposed the motion, arguing that the industry understanding has always been that you must be a member of the Fund prior to the time that you perform the services for which you claim payment from the Fund.

Mr. Bowen informed Ms. Harper that as Director of the Division, he will review the recommendation of the Board, and that he may request further research regarding the legislative intent of UCA 38-11-203(1)(a) before making a final determination regarding payment of the this claim. Mr. Techmeyer asked that Mr. Hunt and Mr. Patterson provide a report to the Board regarding the legislative intent of the statute at the next meeting.

Editor's note: the Division approved payment of the claim in the amount of \$1,355.19; remaining amounts claimed were denied pursuant to the provisions of UCA 38-11-301(3)(b)

Memorandum

To: Gary Bowen, Director
Earl Webster, Program Coordinator
From: Tony R. Patterson, Assistant Attorney General
Date: August 12, 1999
RE: Legislative History on Section 204

A review of the legislative history reveals that no discussions were held regarding the language "during the construction" in Section 204. Two other sections are worth mentioning.

Section 301 sets forth the criteria that must be met for a claimant to be considered a qualified beneficiary. Section 302 establishes the point in time when a claimant is considered to be a qualified beneficiary; basically it is the date the division receives the assessment. These two sections provide the test for when a claimant actually becomes a qualified beneficiary. This is important because Section 204(c)(ii) requires that the claimant must be a qualified beneficiary "during" the construction.

There are basically three interpretations of Section 204(c)(ii) which states, "the person was a qualified beneficiary or laborer during the construction on the owner-occupied residence." A straight forward reading would define the period of "during the construction" as the entire construction period from the beginning of the construction on the residence until it is completed. Under this interpretation, the claimant would have to be registered with the Fund before the construction was started. If a claimant wants the protection of the Fund, he would need to be registered with it before becoming involved in a project. The focus of this approach is to protect the Fund.

A broader interpretation is that the claimant would need to be already registered with the Fund before they provide qualified services on a residence. This approach would require interpreting "during the construction" as only the period that the claimant provided qualified services rather than the construction period from start to finish. This interpretation expands the protection to innocent home owners which is consistent with the stated intent of the legislation. John Young, who served on the original task force, represented that it was the task force's intent to have the claimant registered with the Fund before the qualified services were provided. However, this reflects the task force's intention and not that of the legislature.

The most liberal interpretation is that the claimant must be registered with the Fund at any time prior to the completion of the construction, even if the qualified services were provided prior to the claimant's registration. This interpretation can be supported by the denotation of the word "during." Blacks Law Dictionary, Sixth Edition, 1990, defines it as "[t]hroughout the

course of; throughout the continuance of; in the time of; after the commencement and before the expiration of."

It should be noted that the stated intent of the legislation is to protect innocent home owners from having to pay twice for the same qualified services. The second stated intent is to compensate qualified beneficiaries in appropriate circumstances. Because of the three possible interpretations, it is a policy decision to be made by the Division as to which approach it will adopt. The Director's advisory board has recommended the third and most liberal interpretation. At this time, a valid argument can be made for all three interpretations. However, the third interpretation permits the fund to meet the stated intent of the legislation in more claims than the other two approaches.

It is my recommendation that the Division follow the recommendation of the advisory board because it will permit the stated legislative intent to be met in more cases than the other two interpretations.

The Board, acting under U.C.A. § 38-11-104(3)(a), recommend to the Director to pay the entire claim of Mountain Land Design, Inc., Claim number LRF-1999-405-01. The Board made its recommendation to pay the claim based upon their interpretation of language found in U.C.A. § 38-11-204(1)(c)(ii) which requires a claimant to have been a qualified beneficiary "during the construction " of the residence. The Board interpreted the language to only require a claimant to register with the fund before or after they provide qualified services just as long as they become registered prior to the completion of that residence.

Respondent provided goods for the residence on a monthly basis from August 15, 1997, to February 2, 1998, which totaled \$31,367.90 with interest. Approximately two months later, Respondent finally elected to register with the fund in April 1998. While no payments were ever received on the account, Respondent again extend credit on June 18, 1998. Because Respondent registered with the fund before supplying the material and the final extension of credit on June 18, 1998, the Board recommended that Respondent be determined to have been registered with the fund "during the construction" of the residence. Under the law, Respondent had the option to register or not register with the fund.

While it is common practice for the Director to follow the advice rendered by the Board, the Director feels compelled to deviate from their recommendation in this case.

The controlling statute is U.C.A. § 38-11-301(3)(b) which states that a "person other than a contractor who does not register under subsection (a) shall be prohibited from recovering under the fund as a qualified beneficiary for work performed as qualified services while not registered with the fund." The Director is compelled to interpret the language in Section 38-11-204(1)(c)(ii) consistently with the prohibition just cited. The Director may only order payment of a claim to a non-contractor member for those qualified services that are actually "performed" after registration with the fund. Those services provided prior to registration do not qualify for compensation under the act. Section 302 specially states that the registration is not effective until the initial assessment of the qualified beneficiary is received by the division.

In this case, the Respondent only has the June 18, 1998, invoice for qualified services after its registration. Therefore, that invoice is the only qualified service that the Director is authorized to pay under the LRF Act.

The Director is aware of the four arguments made by Respondent. However, they do not over come the just cited statutory language. In this claim, the Director will order payment for those qualified services that were actually performed after Respondent registered with the fund.

**BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF THE LIEN RECOVERY :	AMENDED ORDER
FUND CLAIM OF MOUNTAIN LAND :	
DESIGN, INC. REGARDING THE :	
CONSTRUCTION BY GLENDON HOMES :	
BUILDERS, ON THE RESIDENCE OF :	Claim No. LRF-1999-0405-01
ROGER & JEEN BROWN :	

Pursuant to the requirements for a disbursement from the Residence Lien Recovery Fund set forth in UTAH CODE ANN. § 38-11-203(1) (1998) the Director of the Division of Occupational & Professional Licensing of the State of Utah, being advised by the Residence Lien Recovery Fund Board and being apprized of all relevant facts finds that:

1. The claimant was a qualified beneficiary during the construction on a residence;
2. The claimant complied with the requirements of UTAH CODE ANN. § 38-11-204;
and
3. There is adequate money in the fund to pay the amount ordered.

WHEREFORE, the Director of the Division of Occupational & Professional Licensing orders that the above-encaptioned claim is payable from the Residence Lien Recovery Fund, and that Claimant be paid \$1,114.55 for qualified services, plus \$142.00 in pre-judgment costs, \$0.00 in pre-judgment attorney fees, and \$28.70 in pre-judgment interest, \$18.00 in post-judgment costs, \$0.00 in post-judgment attorney fees, and \$51.94 in post-judgment interest, for a total claim of \$1,355.19.

Based upon UTAH CODE ANN. § 38-11-301(3)(b), the Director of the Division of Occupational

and Professional Licensing also orders that \$36,599.43 of the amounts claimed in the above-encaptioned claim, specifically \$34,828.33 for services, \$896.95 for pre-judgment interest, \$7.00 for post-judgment costs, and \$867.15 for post-judgment interest, be denied because these amounts arise from work done prior to the claimant registering with the Utah Residence Lien Recovery Fund.

DATED this 30 day of August, 1999.


A. Gary Bowen, Director

CHALLENGE AFTER DENIAL OF CLAIM:

Under the terms of UTAH ADMINISTRATIVE CODE, § R156-46b-202(j) (1996), this claim has been classified by the Division as an informal proceeding. Claimant may challenge the denial of the claim by filing a request for agency review. **(Procedures regarding requests for agency review are attached with Claimant's copy of this Order).**

MAILING CERTIFICATE

I hereby certify that on the 31 day of August, 1999, a true and correct copy of the foregoing Order was sent first class mail, postage prepaid, to the following:

BARBARA HARPER
MOUNTAIN LAND DESIGN, INC.
2984 S 300 W
SALT LAKE CITY UT 84065-3405

Claimant

BRIAN CANNON
871 E 9400 S
SANDY UT 84094-3670

Counsel for Claimant

GLEN ADAMS
GLENDON HOMES
PO BOX 1075
PLEASANT GROVE UT 84062-1075

Non-Paying Party

STEVEN BENNETT
BENNETT, TUELLER, & JOHNSON
3865 S WASATCH BLVD
SALT LAKE CITY UT 84109

Counsel for Non-Paying Party

Kathie L Schwab
Kathie Schwab, Board Secretary